IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.9.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.24837 of 2017

Audiophile India, rep. by its
Proprietor Arjun Narendra ... Petitioner

Vs

The Commercial Tax Officer,
Saligramam Assessment Circle,
No.21, G.K.Estate, Arcot Road,
Madhuravoyal, Chennai-116. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN : 33396319718/2015-2016 dated 31.7.2017, quash the same and further direct the respondent to grant refund of tax amount of Rs.9,18,987/- as per the letter dated 29.2.2016 of the petitioner.

For Petitioner : Mr.N.Murali

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent. With the consent on either side, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by an order passed by the respondent dated 31.07.2017, by which, the petitioner's application for grant of refund claim vide letter dated 29.02.2016 and the reminder letters dated 22.04.2016 ad 08.07.2016 were rejected. Earlier, the petitioner approached this Court and filed W.P.No.7794 of 2017 stating that the respondent has not considered their request for refund and that

the matter was kept pending indefinitely. This Court, by order dated 04.04.2017, disposed of the said writ petition directing the Assistant Commissioner (CT) of the same assessment circle to dispose of the application and pass orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioner and fixing time limit for such exercise to be completed.

3. By referring to the order passed by this Court, the respondent issued a notice dated 29.05.2017. In the said notice, after extracting the direction given in the said writ petition, the respondent stated that the petitioner was given an opportunity to file their objections along with documentary evidence before him within 15 days. The notice does not state as to what was the proposal, for which, the petitioner should give objection and produce documents. Thus, without disclosing as to what is the allegation against the petitioner or as to why the respondent is not satisfied with regard to the claim for refund, the petitioner cannot be called upon to submit their objections and produce documentary evidence.

4. Thus, a show cause notice should be specific in the sense that it should contain all materials, which the petitioner has to meet while submitting their objections. Without furnishing such information, a show cause notice cannot be issued. In the instant case, the notice dated 29.5.2017 is defective for the simple reason that it does not contain the materials or information, against which, the objections have to be filed by the petitioner.

5. Nevertheless, the petitioner submitted their objections on 21.06.2017 furnishing 8 documents, which have been listed therein. The objections dated 21.06.2017 have been referred to by the respondent in the impugned order. But, however, the respondent proceeded on a completely different line, referred to Section 19(4)of the TNVAT Act and alleged that the petitioner has not reversed the Input Tax Credit under the said provision. Further, it is stated the petitioner has not filed Form W for the assessment year 2015 - 2016.

6. The learned counsel for the petitioner has rightly pointed out that there is no such proposal in the notice dated 29.05.2017. Further, it is stated that the question of filing Form W does not arise, as no export transactions are done by the petitioner. That apart, it is stated that the petitioner has reversed the input tax credit under Section 19(4) of the TNVAT Act 2006, which is clear from a perusal of the returns. Thus, due to a defective notice dated 29.05.2017, the entire proceedings stand flawed resulting in the impugned order to be beyond the scope of a show cause notice. Therefore, this Court

is inclined to interfere with the impugned order as well as the notice dated 29.05.2017 and remand the matter to the respondent for a fresh consideration.

7. Accordingly, the writ petition is allowed, the impugned order dated 31.07.2017 as well as the show cause notice dated 29.05.2017 are set aside and the matter is is remitted back to the respondent. The respondent is directed to issue a fresh show cause notice clearly stating as to what are the defects, according to the respondent, which the petitioner has to meet/ answer. On receipt of the show cause notice, the petitioner shall submit their objections and produce all the documents, which they earlier produced and fresh documents, if any, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Saligramam Assessment Circle,
No.21, G.K.Estate, Arcot Road,
Madhuravoyal, Chennai-116.

+1cc to Mr.N.Murali, Advocate, S.R.No.68142
+1cc to the Special Government Pleader(T), S.R.No.68026

W.P.No.24837 of 2017

CS IV
CA(06/10/2017)